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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1962

No. 776

FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, EAL CHAPTER, AFL-CIO, *Petitioner*,

v.

EASTERN AIR LINES, INC., *Respondent*.

## MOTION OF RAILWAY LABOR EXECUTIVES' ASSOCIATION FOR LEAVE TO FILE APPENDED BRIEF AS AMICUS CURIAE IN SUPPORT OF PETITION FOR CERTIORARI

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Comes now the Railway Labor Executives' Association and moves the Court for leave to file the appended brief as amicus curiae in support of the petition for a writ of certiorari filed by Flight Engineers' International Association, EAL Chapter, AFL-CIO. The consent of the petitioner has been obtained; the consent of the respondent was requested but was refused.

The Railway Labor Executives' Association is an unincorporated association with which are affiliated twenty-four standard labor organizations that are the duly authorized and designated collective bargaining representatives under the Railway Labor Act of almost all the country's railroad employees. The labor organizations affiliated with the Association are:

American Railway Supervisors' Association
American Train Dispatchers' Association
Brotherhood of Locomotive Engineers
Brotherhood of Locomotive Firemen and Enginemen
Brotherhood of Maintenance of Way Employes
Brotherhood of Railroad Signalmen
Brotherhood of Railroad Trainmen
Brotherhood Railway Carmen of America
Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes
Brotherhood of Sleeping Car Porters
Hotel & Restaurant Employes' and Bartenders International Union
International Association of Machinists
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers
International Brotherhood of Electrical Workers
International Brotherhood of Firemen and Oilers
International Organization Masters, Mates and Pilots, Inc.
National Marine Engineers' Beneficial Association
Order of Railway Conductors and Brakemen
Railroad Yardmasters of America
Railway Employes' Department, AFL-CIO
Seafarers' International Union of North America
Sheet Metal Workers' International Association
Switchmen's Union of North America
The Order of Railroad Telegraphers

This Court has repeatedly recognized Railway Labor Executives' Association as a proper party to appear and speak for its affiliated labor organizations and the railroad employees they represent in collective bargaining. *Interstate Commerce Commission* v. *Railway Labor Executives' Association*, 315 U.S. 373 (1942); *Railway Labor Executives' Association* v. *United States*, 339 U.S. 142 (1950); *American Trucking Associations* v. *United States*, 355 U.S. 141 (1957).

This case turns upon the construction and application of several provisions of the Railway Labor Act (45 U.S.C. §§ 151 *et seq.*), especially Section 2, Seventh and Section 6. These are the fundamental provisions of the Railway Labor Act governing the procedural requirments for changing rates of pay, rules, and working conditions of railroad and airline employees. The resolution of the questions presented are thus of fundamental importance to the Railway Labor Executives' Association, its affiliated unions, and the employees they represent. The petitioner in this case, a single union representing exclusively airline employees, and which is not affiliated with the Association, cannot represent the interests of the railroad employees who have been governed by the Railway Labor Act and its antecedents for years before the Act was made applicable to the airline industry. The Railway Labor Act, as rewritten in 1934, was enacted at the request of the railroad unions before it was made applicable to the airline industry. The petitioner must direct its attention to the specific detailed facts presented in this case, while the Association can concentrate on the impact of the decision below on all railroad labor and its potential of disruption of the conduct of collective

bargaining as it has traditionally been conducted in the railroad industry under the Railway Labor Act.

WHEREFORE, Railway Labor Executives' Association moves that leave be granted to file the brief appended hereto, as amicus curiae, in support of the petition for a writ of certiorari.

Respectfully submitted,

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February 5, 1963

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**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit**

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## BRIEF OF RAILWAY LABOR EXECUTIVES' ASSOCIATION, AS AMICUS CURIAE, IN SUPPORT OF PETITION

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### INTRODUCTORY STATEMENT

Railway Labor Executives' Association submits this brief in support of the petition for a writ of certiorari pursuant to leave of Court.

The composition of the Association and its interest in this case, are set forth in the preceding motion.

## REASONS FOR GRANTING THE WRIT

1. *The Importance of Reviewing the Decision Below.* For at least three decades labor negotiations in the railroad industry have been conducted on the understanding that, as specifically provided in section 2, Seventh and Section 6 of the Railway Labor Act (45 U.S.C. §§ 151 et seq.), a carrier could not lawfully make a unilateral change in rates of pay, rules, or working conditions unless the change were contained in a notice served by the carrier in accordance with section 6 and processed in accordance with the provisions of the Act. Never until the decision below in this case had any appellate court held, so far as counsel can determine, that if the collective bargaining representative so much as talks to a carrier about changes not contained in a section 6 notice the carrier may thereafter unilaterally install such changes.

The Railway Labor Act is premised on the philosophy that by requiring formal notice of intended changes, and by promoting the facilities for and the requirements of the parties talking about their disputes, disagreements would more likely be harmonized and peaceful relations furthered. But under the holding below, if the union discusses a change desired by a carrier which has not been served in accordance with section 6, the carrier may thereafter unilaterally make such change despite the specific prohibition of section 2, Seventh that "no carrier . . . shall change the rates of pay, rules, or working conditions of its employees . . . except in the manner prescribed in such agreements or in section 6 of this Act."

If the decision below is to be the law of the land, it should become such only after review by this Court. Under such state of the law, a party would no longer

feel free to discuss any suggestions that might arise in the course of negotiations or mediation but which had not been included in a section 6 notice for fear of having "waived" the procedural protection of the Act before the other party could resort to self-help. This could well result in the stifling of free discussion and in a complete disruption of what has heretofore been the accepted principles of negotiations and mediation.

2. *The Decision Below Is in Conflict with Decisions of Other Federal Courts and is Wrong.*

The Petition points out the conflict between the decisions below in this case and decisions of federal courts in other jurisdictions. Obviously, in an industry like the railroad industry, where it is commonplace to have collective bargaining on a national or regional basis, the parties cannot be bound to different procedural requirements dependent on the different interpretations given the same Act in different jurisdictions.

The decision below is plainly wrong. The opinion concedes that the "formal technicalities" (Pet. p. 14a) were not fulfilled, that there was a "technical deficiency" and a "technical omission" in the manner in which the respondent proceeded (Pet. pp. 13a, 14a), and that there was a "technical omission to comply with the formalities of the Act." (Pet. p. 14a) But it concludes that to vitiate the carrier's conduct for such reasons "would give precedence to form over substance". Pet. pp. 13a-14a.

Such language misconceives the climate and history of bargaining under the Railway Labor Act. The procedures specified in the Act are not mere "technicalities"; they are the prescribed regimen of lawfulness.

in making unilateral changes in rates of pay, rules, and working conditions. The opinion below acknowledges that the Act does not provide for "waiver" of the statutory procedures, but finds that they nevertheless may be waived. In relying on *Childers* v. *Bro. of R. Trainmen*, 192 F. 2d 956 (8th Cir. 1951), for such proposition, it misconceives that case and the purpose behind the Railway Labor Act.

In that case the union and the carrier made an agreement without a section 6 notice having been served, and such agreement was sustained against a challenge of its validity by employees who contended that it was invalid because not entered into pursuant to a section 6 notice. But the important fact in that case was that an agreement was reached by the duly authorized representatives of the employees and of the carrier. The purpose of the Railway Labor Act is to promote agreement, and where agreement is reached it matters little or nothing what procedures were followed so long as there is good faith. But such holding is hardly authority for the proposition that a carrier may resort to self-help in changing the rules governing employment unilaterally, without agreement, without following the prescribed procedures, or for the proposition that by talking about a proposal of a carrier not presented in a section 6 notice a union waives the procedures of the Act.

## CONCLUSION

The decision below approves a method of changing rates of pay, rules, and working conditions otherwise than as permitted by the Railway Labor Act and admittedly in "technical" violation of the express commands of that Act. Such holding, if permitted to stand,

would result in far-reaching changes in collective bargaining in the industries governed by that Act. Whether the requirements of the Act may so be departed from raises a question of such importance that it should be reviewed by this Court.

Respectfully submitted,

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